

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Service Rules for the 746-764 and)
776-794 MHz Bands, and)
Revisions to Part 27 of the)
Commission's Rules)
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)
)
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WT Docket No. 99-168

To: The Commission

**REPLY OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

The Association for Maximum Service Television, Inc. ("MSTV") hereby responds briefly to two points made in the Comments of Motorola on Petitions for Reconsideration (Mar. 10, 2000) and to the Opposition of Spectrum Exchange Group, LLC (Mar. 10, 2000) of the *First Report and Order*¹ in the above-captioned proceeding.

First, we continue to urge the Commission to reconsider the power restrictions it adopted in the *First Report and Order*, which effectively exclude broadcast and other higher powered broadband operations from the band. Motorola disagrees. It supplies a map of the land mobile preclusion zones that currently exist around operating broadcast stations on channels 61 and 66 and shows that the spectrum for new services in the paired 10 MHz channels in the 700

¹ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, *First Report and Order*, FCC 00-5 (rel. Jan. 7, 2000)

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MHz band is available only in a “swiss-cheese” like fashion around the protected stations.²

Motorola suggests that if the Commission were to allow broadcasting and other higher powered broadband services in the 700 MHz band going forward, the agency would perpetuate the spotty availability of spectrum shown in the map: “the other [non-broadcast] licensee would be subjected to holes in coverage of the type depicted.”³

The undisputed fact is that as long as existing broadcasters are operating in the 700 MHz band, the other licensee will be subjected to those holes, whether or not the Commission allows new broadcast operations. The preclusion zones reflected in Motorola’s map show the protection afforded to *incumbent* broadcasters, and have no bearing on the operation or protection of *new* entrants. A new entrant into the 700 MHz band, whatever its architecture or the service it intends to provide, is only entitled to a certain degree of protection and must protect adjacent channels. The Commission is unjustified in deciding *ex ante* that

² Although it is difficult to tell, because the map is small and inexact, we have no reason to believe the map is not accurate. In fact, MSTV showed similar maps to the Commission in 1996, when the agency was first considering reallocating channels 60-69. MSTV, along with other broadcasters, submitted a report by MIT Professor Jerry Hausman, in *Broadcasters’ Comments on the Sixth Notice of Proposed Rulemaking, In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268 (Nov. 22, 1996). This report illustrated how little usable spectrum would be available in the major markets if part or all of channels 60-69 were auctioned before broadcasters had moved out. . The Hausman Report compared the estimated value of an early auction of the DTV “holes” in channels 60-69 with an auction of the entire band after the transition. By extrapolating from PCS auctions, it found that the market places a significantly higher value on larger blocks of contiguous spectrum. The Report estimated that delaying the auctions for channels 60-69 would lead to 2.3-10.6 times greater revenue because of the ability to sell large spectrum blocks after the transition was complete. MSTV also brought the preclusion zones to the attention of the Commission in the allocation phase of this proceeding to illustrate how allocating a single contiguous 36 MHz block rather than separated paired channels would mitigate this “swiss-cheese” effect. See, e.g., *Comments of the Association of Maximum Service Television, Inc., and the National Association Broadcasters to Notice of Proposed Rulemaking, In re. Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157 (Sept. 15, 1997).

³ See *Motorola Comments* at 4.

higher powered broadcast operations will be unable to comply with these conditions of the license.

To the extent that what troubles Motorola is the relationship between lower power and higher power services *after* incumbent broadcasters have been moved out of the band, that concern is accommodated by requiring new broadcast (or other higher powered) entrants to meet the out-of-band emission limits required of any other service operating in the band. Such limits permit a 10 MHz and 5 MHz licensee to operate on adjacent channels without undue interference or fallow spectrum. An entity that wins a license and operates a broadcast or other broadband service is not entitled to any more protection than any other entity would be. Broadcast system architecture will evolve, like that of all other services, to cope with the new spectrum realities and to benefit from technical innovations. In sum, the land mobile preclusion zones represented in Motorola's map are an accurate reflection of spectrum availability today, whether or not there are new broadcast entrants. Motorola's map, however, bears little on *new* broadcast operations or on the availability of spectrum once incumbent broadcasters are relocated. The Commission has offered no justification (beyond an unsubstantiated hunch that cellular-type mobile operations will be the best use of the spectrum) for precluding broadcast services from fitting into the newly available spectrum along with other services. Motorola fails to supply such a justification.

Second, MSTV urges the Commission to revisit its decision to use the signal-to-noise ratios ("D/U ratios") listed in 47 C.F.R. § 27.60 as the DTV and TV co-channel and adjacent channel protection criteria in the 700 MHz band. Motorola apparently misunderstood the nature of MSTV's argument when, in its Comments, it asked the Commission to relax these criteria.⁴ This may be explained by the fact that Motorola objects to broadband use of the 700

⁴ See *id.*, at 6.

MHz band. MSTV is not, in this proceeding, addressing the adequacy of these protection criteria for narrowband-to-broadband interference, as Motorola was in the 700 MHz public safety proceeding.⁵ Rather, we are urging the Commission to reexamine the protection criteria necessary for broadband-to-broadband transmissions that are likely in the commercial portions of the 700 MHz band. These protection criteria should be bandwidth dependent and correspond to commercial, not public safety, uses of the band.⁶

On one point, MSTV agrees with Motorola and appreciates Motorola's observation that the DTV transition is technically complex and not entirely within broadcasters' control. Recognizing that if the Commission really wants to see existing broadcasters vacate the 700 MHz band quickly, it ought to be more proactive in speeding the DTV transition, Motorola urges the Commission to "ensure that the transition to DTV does not languish."⁷ Specifically, Motorola agrees with broadcasters that the accessibility to digital services to consumers -- something that the Commission has been slow to promote either through robust technical compatibility rules or through cable carriage rules -- is the best marketplace means to speed the transition.⁸

⁵ See *Motorola Petition for Reconsideration and Clarification*, WT Docket No. 96-86 (Dec. 2, 1998).

⁶ TRW Inc. makes a similar argument generally with respect to interference protection criteria in the band, although MSTV does not recommend the same protection criteria. See *Consolidated Comments of TRW Inc. and Opposition to Petitions for Reconsideration and/or Clarification*, at 6-8 (Mar. 10, 2000). MSTV urges the Commission to adapt the protection criteria now in force between public safety and broadcast services to ensure that the same levels of protection will be in place in a broadband-to-broadband interference environment. It should adopt an interference protection formula that provides for a varying signal to noise ratio depending on the bandwidth of the interfering service.

⁷ See *Motorola Comments* at 8.

⁸ *Id.*

The proposal of Spectrum Exchange Group, LLC, that the Commission should clear the 700 MHz band by holding (or contracting out) a pre-auction “clearing auction” is improvident, uninformed, and late. As a preliminary matter, because the proposal raises radical new approaches to the DTV transition and the regulation of broadcast services as a whole, the Commission should not even consider it at this late stage of the proceeding. The Spectrum Exchange Group proposes changes to the cable must carry rules, changes to the DTV and analog service rules, and changes to the DTV and analog allotment tables, among other things, which would all have a dramatic impact on the public’s broadcast service. The proposal, for example, in just a sentence or two would do away with television service to the approximately 30% of the public that relies on over-the-air service in those markets with channels in the 700 MHz band (not to mention the public that subscribes to cable but has some over-the-air sets in the house). Without going into the details of the Spectrum Exchange proposal, we note that it ignores the fact that the Communications Act forbids the Commission from mandating that any broadcaster cease operations in the 700 MHz band before the end of the DTV transition, 47 U.S.C. § 337(d)(2), that DTV assignments have been carefully crafted on a nationwide basis (not on a market-by-market basis) and are not fungible as among stations in a given market, and that analog and digital service are not exchangeable since analog service is universally receivable and digital service is receivable by almost no one.

* * *

For the reasons stated herein, MSTV urges the Commission, notwithstanding Motorola’s comments on MSTV’s petition for reconsideration, to reconsider the service rules adopted in this proceeding and modify them in a manner that will give both high- and low-power

service providers opportunity to use the 700 MHz band and will ensure the continued protection of existing broadcast services operating in the band.

Respectfully Submitted,

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March 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2000, I caused copies of the foregoing "Reply of the Association for Maximum Service Television, Inc." to be mailed via U.S. first-class mail to:

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